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| 09/916,935 | 07/27/2001 | Vittorio Castelli | YOR9-2001-0461 (8728-524) | 8782 |
| 46069 7590 05/21/2009 F. CHAU & ASSOCIATES, LLC 130 WOODBURY ROAD WOODBURY, NY 11797 | | | | |
| EXAMINER | | | | |
| VINCENT, DAVID ROBERT | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: VITTORIO CASTELLI, PETER A. FRANASZEK, and JOY
ALOYSIUS THOMAS

Appeal No. 2008-000876
Application 09/916935
Technology Center 2100

Mailed: May 21, 2009

Before DALE M. SHAW *Chief Appeals Administrator*.
SHAW, *Chief Appeals Administrator*.

ORDER REMANDING TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences (BPAI) on November 19, 2007. A docketing notice was mailed to Appellants on December 5, 2007. A further review of

the application has revealed that it is not ready for decision consideration by a BPAI judicial panel. Accordingly, the application is herewith being remanded to the Examiner to address the following matter.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

A Reply Brief was filed in this application on July 2, 2007.

According to the August 9, 2007 entry in the Image File Wrapper, the examiner refused to consider the Reply Brief because the Reply Brief was not in accordance with 37 CFR § 41.41(a)(1). This is incorrect. According to 37 CFR § 41.41(a)(1):

(a)(1)Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.

The examiner's answer was filed on April 30, 2007. Therefore, two months from that date was June 30, 2007, a Saturday. The appellant filed the Reply Brief on the very next business day July 2, 2007. Therefore, the Reply Brief was in compliance with 37 CFR § 41.41(a)(1) and should have been properly considered by the examiner.

CONCLUSION

Accordingly, it is

ORDERED that this application be remanded to the Examiner to:

- 1) consider the Reply Brief filed July 2, 2007 as indicated above;
- and
- 2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

Appeal No. 2008-0876
Application 09/916935

DMS/PEB

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